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Supreme Court of the United States

OCTOBER TERM 1945

No. 255

S. R. A. INC., PETITIONER,

vs.

STATE OF MINNESOTA (1941 TAX)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, S.R. A. INCORPORATED, a Minnesota Corporation, hereby petitions for review, upon writ of certiorari, of the decision and judgment of the Supreme Court of Minnesota, being the court of last resort of that State, and respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

This is a petition by S. R. A. INCORPORATED, a Corporation under the laws of Minnesota, to determine that the title to certain real property in Ramsey County, Minnesota, being purchased by it under contract for deed with the United States, was in the United States of America on

May 1, 1941, and that the same was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price for said property had been paid in full to the United States and until the petitioner was entitled to a conveyance from the United States. The tax year here involved is the year 1941.

The case was tried upon a stipulation of facts (R. 83-87). From this stipulation and the findings based thereon (R. 87-91), it appears that S. R. A. INCORPORATED is a Minnesota Corporation; that the property in question is located in Ramsey County, Minnesota, and was acquired by the United States in 1867 and improved by it in 1870 (R. 84); that the premises and the building thereon for many years thereafter were occupied by the United States Government as a post office and as an office for various departments of the government, including the Department of Internal Revenue (R. 84); that in 1939 the United States sold to the petitioner the premises involved under contract for deed, under the terms of which the United States agreed to deliver to petitioner a deed to said premises when the total purchase price had been paid as provided and the terms and conditions of the contract for deed had been complied with (R. 4-11); that the contract was on May 1, 1941, and still is in full force and effect (R. 85).

Prior to May 1, 1941, the petitioner took possession of the premises, as it was entitled to do under the terms of the contract, razed the building thereon, constructed a new building on part thereof, which is leased to various tenants, and leased the remainder of the property for a parking lot (R. 85). On May 1, 1941, the premises were used for com-

mercial purposes, appellant collecting and retaining rents, and no part was used by the United States (R. 85). On May 1, 1941, there was still due and owing to the United States under the contract for deed $103,850.54, and appellant was not entitled to a deed (R. 86). On May 1, 1941, the County of Ramsey, State of Minnesota, assessed and levied a tax against the said premises "subject to fee title remaining in the United States of America" in the sum of $11,431.78 (R. 86), based upon a valuation of $277,600.00 (R. 3). The assessment of this tax was contested by the petitioner, the original petition alleging that the title to the premises was in the United States and that the premises were exempt from taxation, and on the further ground that the valuation was excessive (R. 76-82).

The cause came on for trial upon all issues on April 12, 1944 (R. 87), at which time the court of first instance permitted the amended petition (R. 79-82) to be filed by appellant. Thereafter and at the time of the trial the parties stipulated that for the purposes of this litigation the full and true value of the premises as of May 1, 1940, was $225,000.00 without deduction of any amount on account of the balance remaining due under the contract for deed (R. 86-87). All other facts were stipulated (R. 83-87). The Court found that the premises were not immune from taxation, overruled the objections, held the assessment valid and rendered judgment on May 8, 1944, in favor of the State and adjudged the premises here involved liable for taxes for the year 1941 in the sum of $9,270.97 (R. 91-92). Upon appeal to the Supreme Court of Minnesota, this judgment

was affirmed by decision filed April 13, 1945 (R. 93), and judgment entered April 24, 1945 (R. 93-94).

The position of S. R. A. INCORPORATED was and is that the property in question was not subject to taxation by the State of Minnesota in the year involved (1941), that the property was immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the petitioner was entitled to a deed from the United States under the terms of its contract with the United States; that the "equity" of petitioner was not subject to taxation by the State; and that if the equity was subject to taxation the State erroneously included the value of the interest of the United States in its valuation of the premises.

BASIS OF JURISDICTION.

A review of the judgment is plainly within the jurisdiction of this court under Section 237 (b) of the Judicial Code (28 U. S. C. Section 344) authorizing such review:

> "Where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States."

The matter was heard by the Court of first instance upon the petition of S. R. A. INCORPORATED and upon stipulated facts (R. 76-87).

This is a special statutory proceeding and no separate answer was required or interposed by the State and therefore the pleadings did not designate the statute under which the right to impose the tax was asserted.

The petition of S. R. A. INCORPORATED (filed in the District Court) alleges that the title to the premises is in the United States and that the premises are exempt from State taxation (R. 76-82). That the levy and assessment of the tax deprives the petitioner of a privilege and immunity secured to it under the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849, and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857, and is in violation of petitioner's rights under the due process and equal protection clauses of the Federal Constitution, without conjecture as to the

statute under which the State had assumed to impose the tax (R. 81).

This position was advanced and adhered to on appeal to the State Supreme Court, where the same constitutional objections to the tax were raised by assignments of error and argument. In the circumstances, the procedure available to S. R. A. INCORPORATED appears to be by application for certiorari rather than appeal. Memphis Natural Gas Co. v. Beeler, 315 U. S. 649 (62 Sup. Ct. Rep. 857).

The case was tried on April 12, 1944, and the Court of first instance found that the premises were not immune but were subject to state taxation (R. 87-91) and by judgment entered May 8, 1944, adjudged the premises here involved "subject to fee title remaining in the United States of America" liable for taxes in the year 1941 in the sum of $9,270.97 (R. 91-92). Upon appeal that judgment was affirmed by the Supreme Court of Minnesota by opinion dated April 13th, 1945 (R. 93), and by judgment entered April 24th, 1945 (R. 93-94). The judgment sought to be reviewed is that entered April 24, 1945, in the Supreme Court of the State of Minnesota.

This is a companion case to a similar matter involving the tax on the same premises for the taxable year 1940. That matter was passed upon by the Supreme Court of Minnesota in two opinions, one entered December 24, 1942 (R. 27-38), and one entered April 13, 1945 (R. 52-74), and a petition for writ of certiorari to review the judgment of the Supreme Court of Minnesota entered in that cause is filed with the Supreme Court of the United States with this petition.

The decision of December 24, 1942 (R. 27-38) (first above referred to) is reported in 213 Minnesota Reports at page 487; the decision of April 13, 1945 (R. 52-74) is reported in 18 N. W. (2d) 442, but has not yet appeared in the Minnesota Reports.

The opinion in this cause of April 13, 1945 (R. 93), is based upon the two decisions in respect of the 1940 tax on the same premises, is reported in 18 N. W. (2d) 455, but has not yet appeared in the Minnesota Reports.

The filing of this petition is timely since the time for filing was extended to July 24, 1945, by order of this Court dated July 13, 1945.

QUESTIONS PRESENTED

The ultimate questions thus presented are whether the enforcement of the tax as levied would deprive S. R. A. (the petitioner) of its property without due process of law or deny it the equal protection of the laws in violation of Article XIV, Section 1 of the Amendments to the Constitution of the United States or would operate to subject to taxation property of the United States which is immune from taxation under the decisions of this court and contrary to the provisions of Article IV, Section 3 of the United States Constitution and contrary to the provisions of the Organic Act of Minnesota and of the Enabling Act of Congress authorizing the Minnesota State government and of the Constitution of the State of Minnesota.

Specifically, the questions presented are as follows:

1. Where land owned by the United States of America is sold by it under an installment contract for deed, may the State of Minnesota tax such land as real estate prior to such compliance by the purchaser with the contract as will entitle him to a deed?

2. May such land be taxed by the State "subject to fee title remaining in the United States of America?"

3. May the interest of the United States in the premises (assuming non-exemption) be included in determining the value of the property for tax purposes?

REASONS FOR GRANTING OF WRIT

1. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the applicable decisions of this Court as expressed in Kansas Pacific Ry. Co. v. Prescott, 16 Wall. 603, 21 L. Ed. 373, Union Pacific Railroad Co. v. McShane, 22 Wall. 444, 22 L. Ed. 747, Northern Pacific Ry. Co. v. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201, Irwin v. Wright, 258 U. S. 219, 66 L. Ed. 573, 42 Sup. Ct. Rep. 293, U. S. v. Allegheny Co., 322 U. S. 174, 64 Sup. Ct. Rep. 908.

2. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the decision of the Ninth Circuit Court of Appeals in Lincoln County v. Pacific Spruce Corporation, 26 Fed. 2d 435, and not in accord with the decision of the Fifth Circuit Court of Appeals in Ken Realty Co. v. Johnson, 138 Fed. 2d 809.

3. The Supreme Court of the State of Minnesota has decided a Federal question of substance in a way that is directly in conflict with the decisions of the highest courts of other states as expressed in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, Copp v. State, 90 W. Va. 444, 71 S. E. 580, People v. Burke, 142 N. E. 320 affirming 198 N. Y. S. 601, and of intermediate State Courts of Appeal as expressed in People v. Burke, 226 N. Y. S. 882 affirming 217 N. Y. S. 803 and A. B. R. Corporation v. City of Newark, 35 Atl. 2d (N. J.) 473.

4. The matter here presented is of grave importance to petitioner, of course. But it is also of importance to the United States and to the States of the Union. Vast land

areas have been acquired of late years by the United States and at the close of the war, large portions of these areas may be sold to purchasers under contracts such as that here involved. The question of taxation is of vital importance for on the one hand if the premises are non-taxable, the price at which the lands may be sold will be much greater whi on the other hand if taxable, the revenues accruing to the respective states will be increased as the premises are sol

5. Under Article IV, Section 3 of the United States Constitution, Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. To tax property, the title to which is in the United States, and before the purchaser under contract for deed is entitled t a conveyance, is a direct interference by the State with this power.

The Organic Act of Minnesota, the Enabling Act and the Constitution of Minnesota all provide that no tax shall be imposed upon lands belonging to the United States, and the tax herein sought to be levied and assessed is contrary to the provisions thereof.

ASSIGNMENTS OF ERROR

The Supreme Court of the Minnesota erred:

1. In affirming the judgment of the District Court of Ramsey County, Minnesota, dated May 8, 1944.

2. In holding the tax valid.

3. In holding that the property here involved was subject to taxation by the State of Minnesota "subject to fee title remaining in the United States of America."

4. In refusing to hold that the tax was a violation of Article IV, Section 3 of the Constitution of the United States.

5. In refusing to hold that the tax was a violation of Section 1 of Article XIV of the amendments to the Constitution of the United States.

6. In refusing to hold that the tax was a violation of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3d day of March, 1849.

7. In refusing to hold that the tax was a violation of the act of Congress authorizing a state government for the Territory of Minnesota adopted by the Congress of the United States on the 26th day of February, 1857.

8. In refusing to hold that the questions here involved were Federal questions and not controlled by the law of any state under Article VI, Paragraph 2 (the Supremacy clause) of the Constitution of the United States.

9. In refusing to hold that the tax was a violation of Article 2, Section 3 of the Constitution of the State of Minnesota and therefore deprived the petitioner of his property without due process and denied it the equal protection of the law under Section 1, Article XIV of the amendments to the U. S. Constitution.

10. In holding that the petitioner is not in a position to assert the United States tax immunity.

11. In holding that the interests of vendor and vendee in real estate in Minnesota are separable for the purposes of real estate taxation.

12. In refusing to hold that the building on the premises was taxable as personal property under Section 272.03 Minnesota Statutes (1941).

13. In basing its decision in part upon the fact that the premises here involved are used for commercial purposes.

14. In holding that a tax levy upon the vendees equitable interest is not directly or indirectly a tax upon the vendors legal estate.

15. In holding that the State of Minnesota may levy a tax upon a limited interest or estate in real property and, upon default hold a tax sale of such limited interest or estate, subject to and without impairing the outstanding superior lien or other estate.

16. In holding that the doctrine of the federal land-grant cases has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

ARGUMENT

I.

Enforcement of the tax in question would deprive S. R. A. INCORPORATED of its property without due process of law and deny it the equal protection of the law.

The decision of the Supreme Court of Minnesota is in conflict with the applicable decisions of this court and of the decisions of other federal and state courts respecting the taxation of property sold under contract, the legal title to which is in the United States prior to the time the contract has been so far performed as to entitle the purchaser to a deed.

In the State Court decisions in Mint Realty Co. v. Philadelphia, 218 Pa. St. 104, 66 Atl. 1130, Copp v. State, 90 W. Va. 444, 71 S. E. 580, A. B. R. Corporation v. City of Newark, 35 Atl. 2d 473, People v. Burke, 142 N. E. (N. Y.) 320 and 222 N. Y. S. 882, in the decision of the Circuit Court of Appeals for the Ninth Circuit in Lincoln Co. v. Pacific Spruce Corporation, 26 Fed. 2nd 435, and in the U. S. District Court decision in U. S. v. City of Milwaukee, 100 Fed. 828, the precise situation to be considered in this case was presented and in each case it was held that the land in question was not subject to taxation so long as legal title remained in the United States until all conditions required to be performed by the purchaser, including full payment of the purchase price, had in fact been performed. The decisions of the United States Supreme Court in Kansas Pacific Railway vs. Prescott, 16 Wall. 603, 21 L. Ed. 373, Union Pacific Railroad Co. vs. McShane, 22 Wall. 444,

22 L. Ed. 747, Northern Pacific Ry. Co. vs. Rockne, 115 U. S. 600, 29 L. Ed. 477, 6 Sup. Ct. Rep. 201 and Irwin vs. Wright, 258 U. S. 219, 6 L. Ed. 573, 42 Sup. Ct. Rep. 293. while relating to disposition of Federal lands by grant to railroads or to homesteaders embody the same principles of law and are strictly analogous to the case here presented for review. The attempt on the part of the Supreme Court of Minnesota to distinguish these decisions on the ground that the disposition here is by contract for deed, is based upon no authority, and is not convincing. We respectfully submit that the same principle of law should be applied in both instances. Until the first Minnesota decisions involved in this proceeding, no contrary opinion had ever been written by a court of final jurisdiction. The point was settled insofar as it is possible for a point to be settled by case law. In the case of Ken Realty Company v. Johnson, 138 Fed. 2d 809, the Fifth Circuit Court of Appeals in an almost identical case held that the purchaser under such a contract as is involved in this proceeding which reserved title in the United States had an interest subject to taxation under Alabama laws, the value of the interest being measured each tax year by the value of the whole property, diminished by the amount of the unpaid purchase money.

The decisions by the Supreme Court of Minnesota here being considered rest upon two bases—first: that the interests of S. R. A. and of the United States in the premises involved were, for the purpose of taxation, separable, and second: that S. R. A. could not assert the immunity. This Court is the case of U. S. v. Allegheny County 322 U. S. 174, 64 Sup. Ct. Rep. 908, reached an opposite conclusion

on each point. In addition, this Court in that case determined that the titles or liens created by such a contract for deed as is here in issue was a question of federal law not controlled by the law of any state.

Of course, the vendee under the contract for deed has an interest in the land, call it an "equity," or an "equitable interest," or an "equitable title." The vendee has a property right which is entitled to protection and which may be conveyed, but that interest or right is only pro tanto and full or perfect equitable title only matures upon performance by the vendee of the conditions of the contract, such as payment in full of the purchase price.

Here the State has attempted to tax the real estate "subject to fee title remaining in the United States of America." This Court has ruled directly that the equity of the vendee may not be assessed and taxed. In the case of Irwin v. Wright, (supra), Irwin was a homestead entryman under the Homestead Act and the Reclamation Act of land in Arizona. He had not fulfilled any of the conditions required by him to be performed before a patent would issue. The State of Arizona attempted to tax the equity of Irwin in the premises. This court held such equity was not taxable.

In Lincoln County v. Pacific Spruce Corporation (supra) the court held that the purchaser had no such interest in the property that was subject to taxation by the county because of title reserved by the United States Spruce Corporation, holding that if the government had parted with everything except the naked legal title, the property was subject to taxation; otherwise it was not. These two decisions would seem to be controlling as a matter of federal law.

The same result was reached by the Pennsylvania Supreme Court in Mint Realty Company v. Philadelphia (supra) and by the New York Supreme Court in People v. Burke (supra).

In the instant case the State contends, and the Supreme Court of Minnesota determined that it was the property of S. R. A. that was being taxed, not that of the United States. In determining the value of the land for the purposes of taxation, the value of all interests was embraced, including the interest of the United States. The property in question was assessed and taxed as all other real property in the County and without deduction of any amount due to the United States under the contract for deed.

We call particular attention to the conclusion reached by this Court in the case of U. S. v. Allegheny County (Supra) that the same result was reached by including the value of the machinery owned by the Government in the assessment of the land as would have been reached if the machinery were taxed in form and the substance of the procedure was to lay an ad valorem general property tax on property owned by the United States. If the power to tax be assumed, the inclusion of the interest of the United States in determining the value for tax purposes is clearly erroneous.

The Supreme Court of Minnesota in its first opinion recognized that in Minnesota proceedings to enforce real estate taxes are in rem, that real estate taxes are assessed against the land itself and that they are not against the person owning the property or his estate. In its second opinion it determined (without citing any authorizing statutory enactment) that the state could levy a tax upon the

vendee's equitable interest without affecting the vendor's legal estate and hold a tax sale of such limited interest subject to and without impairing the estate of the vendor. These inconsistencies cannot be reconciled. This Court held expressly to the contrary in Northern Pacific Railway v. Rockne (supra) where it was said:

> "No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose jurisdiction it is done. If not assessed by direct act of the legislature itself, it must, to be valid, be done under authority of a law enacted by such legislature. A valid sale, therefore, for taxes, being the highest exercise of sovereign power of the state, must carry the title to the property sold, and if it does not do this it is because the assessment is void.
>
> "It follows that, if the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such title, it is because there exists no authority to make it. At all events the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of her right to them until these costs are paid."

THE STATUTES

It is significant that the statutes of the State of Minnesota on this subject indicate complete agreement with the foregoing expressions of the United States Supreme Court. Section 279.16, Minnesota Statutes provides the form of judgment in tax sales by the state, and requires that the judgment contain a recital that "the amount of the taxes, penalties, and cost to which, as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, whatsoever; and it is adjudged that unless the amount to which each of said parcels is liable to be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable."

Section 280.03 recites the form of certificate to be issued to the purchaser at a tax sale and provides:

> "If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever."

To the same effect is Section 280.11. And Section 280.25, providing for the issuance of a deed in the name of the State, reads:

> ". . . And every such deed shall vest the grantee with complete title to such lands subject to the defenses that the tract or parcel was exempt from taxation or that the taxes for which such tract or parcel was sold at said tax sale had been paid."

There is no provision in the Minnesota Statutes authoriz-

ing the taxation of the interest of the vendee in the premises here involved.

Even if the premises were not immune from taxation as being the property of the United States, no tax may be levied unless there be legislative authority therefor.

Minnesota Statutes, Section 272.03 defines real property for the purpose of taxation and is as follows:

> "272.03. Real Property. Real property, for the purpose of taxation, shall be construed to include the land itself and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same."

It will be noticed that in the assessment of the land all interests are included and no assessment can then be made upon this property unless it includes the interest of the United States. There is no statutory authority whatsoever for the assessment of vendee's interest under a contract of purchase from the United States. Minnesota Statutes do provide for the taxation of the vendee's interest under certain circumstances. Minnesota Statutes 1941, Section 273.19, provides as follows:

> "273.19. Lessees and equitable owners—Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered,

for all purposes of taxation as the property of the person so holding the same."

Property held under contract for deed when the fee title is in the United States has not been included in this statute, and properly so since if included, such a purchase would be void for reasons hereinbefore set forth. In the opinion below, this statute is not mentioned or commented upon.

The building on the land being purchased by S. R. A. under this contract for deed is subject to taxation as personal property under Sec. 272.03 Minnesota Statutes reading in part as follows:

"Personal property for the purposes of taxation shall be construed to include:

1. All goods, chattels, moneys, and effects.
2. All ships, boats, and vessels belonging to inhabitants of this state, whether at home or abroad, and all capital invested therein.
3. *All improvements made by others upon lands the fee of which is still vested in the United States.* (Italics supplied.)

This is a clear indication that the Legislature intended that such lands should not be taxable as real estate, and presents statutory authority which the Minnesota court neither followed nor explained away.

CONGRESS HAS NOT CONSENTED TO STATE TAXATION OF THIS PROPERTY

The property of the United States sold under contract is subject to state taxation only by consent of the United States, and the United States has not consented to the taxation of this property. In many instances in recent years, Congress has expressly consented to state and local taxation of property owned by the United States or one of its instrumentalities. Thus Congress has expressly consented to state taxation of lands owned by the Reconstruction Finance Corporation, (15 U. S. C. Sec. 610); to state taxation of lands of homestead entrymen, (43 U. S. C. Sec. 455); to state taxation of lands of desert entrymen, (43 U. S. C. Sec. 455a); to state taxation of real property acquired by the Federal Housing Administrator, (12 U. S. C. Sec. 1714); to state taxation of real property of the Federal Deposit Insurance Corporation, (12 U. S. C. 264 p); to state taxation of real property owned by the Federal Home Loan Banks, (12 U. S. C. Sec. 1433); by Federal Land Banks, (12 U. S. C. Sec. 931); by Federal Reserve Banks, (12 U. S. C. Sec. 531); by National Farm Loan Associations, (12 U. S. C. Sec. 931).

Lands granted to railroads are now subject to state and local taxation notwithstanding the fact that the railroads may not be entitled to a patent for Congress has expressly consented to such taxation. 73 U. S. C. Sec. 882.

But Congress has not consented to state or local taxation of properties which are being sold under contract whereby the title is reserved by the United States until full payment of the purchase price.

CONCLUSION

The Minnesota Court was in error fundamentally in failing to distinguish between taxation of land in rem and taxation of interests in personam. Further than that, it treated the questions presented as matters of State Law when they are under the decisions of this Court, matters of Federal Law. If it be the land that is subject to taxation and not the interests of individuals, then the levy of a tax against the premises here being purchased must be a lien superior to the interests of the vendor, the United States.

Such a conclusion seemed inescapable to other courts when confronted with similar cases. The Minnesota decisions and the late decision of the Fifth Circuit in Ken Realty Co. v. Johnson have introduced discordant notes into what was previously an harmonious unanimity of opinion. The gravity and importance of the questions involved merit a decision by the ultimate judicial authority. To that end petitioner respectfully submits its petition for certiorari to review the decision of the Minnesota Court which petitioner contends is founded upon fundamental error.

Respectfully submitted,

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